

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NATIONSTAR MORTGAGE LLC; and
FEDERAL HOME LOAN MORTGAGE
CORPORATION,
Plaintiffs,
vs.
OPERTURE INC.,
Defendant.

Case No. 2:17-cv-03056-GMN-PAL

ORDER

Pending before the Court are the Motions to Vacate Default Judgment, (ECF Nos. 18, 19), filed by Defendant Operture Inc. (“Defendant”). Plaintiffs Nationstar Mortgage LLC and Federal Home Loan Mortgage Corporation (“Plaintiffs”) filed a Response, (ECF No. 20). For the reasons discussed below, the Court **DENIES** Defendant’s Motions to Vacate Default Judgment.

I. BACKGROUND

This case arises from a foreclosure sale concerning real property located at 8101 W. Flamingo Road, Unit 1010, Las Vegas, Nevada (“the Property”), conducted on January 14, 2015. (Compl. ¶ 1, ECF No. 1). Defendant purportedly purchased the Property at that sale. On December 13, 2017, Plaintiffs initiated this case by filing their Complaint, (ECF No. 1), contending that the foreclosure sale to Defendant did not extinguish their deed of trust; and thus, Plaintiffs sought to quiet title with the Property, declaratory relief, and a preliminary injunction. (*Id.*).

On December 14, 2017, Plaintiffs, through a process server, served a copy of the Complaint and Summons to Melanie Galero, the registered “Service of Process Administrator” for Defendant, at Defendant’s registered address of 3773 Howard Hughes Parkway, Suite 500S,

1 Las Vegas, Nevada 89169. (Aff. Service, ECF No. 9). Plaintiffs filed an Affidavit of Service
 2 with the Court five days later stating that Defendant had been served with process. (*Id.*).

3 Because Defendant failed to plead or otherwise defend in this action, Plaintiffs moved
 4 for Entry of Clerk's Default on February 6, 2018. (Mot. Entry Clerk's Default, ECF No. 10).
 5 The Clerk of Court entered Default against Defendant one month later. (Clerk's Entry Default,
 6 ECF No. 11). Roughly two weeks after entry of Default, Plaintiffs moved for default judgment
 7 against Defendant. (Mot. Default J., ECF No. 12). The Court granted default judgment on
 8 March 4, 2019. (Order, ECF No. 15). Nearly one year later, Defendant filed the pending
 9 Motions seeking to vacate the default judgment. (Mots. Vacate Default J., ECF Nos. 18, 19).

10 **II. LEGAL STANDARD**

11 Federal Rule of Civil Procedure 60(b)(4) allows a court to relieve a party from final
 12 judgment when "the judgment is void." Fed. R. Civ. P. 60(b)(4). A judgment is void, for
 13 example, when a court entered it without jurisdiction over the parties. *In re Tuli*, 172 F.3d 707,
 14 712 (9th Cir. 1999). Moreover, if a defaulted party can demonstrate that service of process to it
 15 was defective, then the court can vacate the default judgment without the defaulted party
 16 having to show a meritorious defense. *Zurich Am. Ins. Co. v. Sealink Ins. Serv. Corp.*, 752 F.
 17 App'x 406 (9th Cir. 2018) (citing *Thos. P. Gonzalez Corp. v. Consejo Nacional de Produccion*
 18 *de Costa Rica*, 614 F.2d 1247, 1256 (9th Cir. 1980)). A party can bring a motion under FRCP
 19 60(b)(4) at any time. *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987).

20 Federal Rule of Civil Procedure 60(b)(1) allows the Court to relieve a party from
 21 judgment based on "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P.
 22 60(b)(1). According to the Ninth Circuit, a trial court may deny a Rule 60(b) motion to vacate
 23 default judgment if (1) the plaintiff would be prejudiced if the judgment is set aside, (2) the
 24 defendant has no meritorious defense, or (3) the defendant's culpable conduct led to the default.
 25 *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 815 (9th Cir. 1985) (citing *Falk v. Allen*,

1 739 F.2d 461, 463 (9th Cir. 1984)). A court may deny a motion to vacate default judgment
2 based on any one of the listed factors not weighing in favor of the defaulted party. *Meadows*,
3 817 F.2d at 521; *Bayview Loan Servicing, LLC for Wilmington Sav. Fund Soc'y, FSB per ECF*
4 *No. 33 Order v. Trejo*, No. 2:17-cv-01016-MMD-NJK, 2019 WL 6134471, at *2 (D. Nev. Nov.
5 18, 2019).

6 **III. DISCUSSION**

7 Defendant Operture, Inc. moves for the Court to vacate the default judgment entered
8 against it pursuant to Federal Rules of Civil Procedure 60(b)(4) and 60(b)(1). (Mot. Vacate
9 Default J. at 3). For the reasons discussed below, Defendant's arguments are without merit.

10 **A. Representation by Counsel**

11 At the outset, Micah Buitron acting pro se filed the Motions to Vacate Default Judgment
12 on behalf of Defendant Operture, Inc. (Mot. Vacate Default J. at 1) (requesting that the Court
13 allow "Micah Buitron (aka Edward Bui)" to proceed as a pro se litigant as the "sole member of
14 Operture"). Yet the Nevada Secretary of State's website does not list Micah Buitron or Edward
15 Bui as being affiliated with Operture, Inc. (Nev. Secretary of State Website, Ex. A to Pl.'s
16 Resp., ECF No. 20-1). Even if it did, "[a] corporation may appear in federal court only through
17 licensed counsel." *United States v. High Country Broadcasting Co., Inc.*, 3 F.3d 1244, 1245
18 (9th Cir. 1993); *Schaefer v. Hundley*, No. 2:15-cv-02017-RFB-VCF, 2020 WL 2773476, at *2
19 (D. Nev. May 27, 2020) (citing 28 U.S.C. § 1654). Micah Buitron thus may not appear on a
20 pro se basis for Operture Inc. to seek relief from the default judgment.

21 **B. Rule 60(b)(4)**

22 Even if Micah Buitron could properly represent Defendant, the current arguments for
23 relief from judgment fail on their merits. Mr. Buitron first moves for the Court to vacate
24 default judgment against Defendant on the ground that the Court lacked jurisdiction over it due
25 to insufficient service of process, which purportedly deprived Defendant an opportunity to be

1 heard. (Mot. Vacate Default J. at 3–4). As discussed below, the Court finds that it had
2 jurisdiction over Defendant when entering default judgment because Plaintiffs’ service of
3 process complied with the applicable requirements.

4 Defendant is a corporate entity, so service of process against it must comply with
5 Federal Rule of Civil Procedure 4(h). Pursuant to Federal Rule of Civil Procedure 4(h), a
6 corporation may be served either “by delivering a copy of the summons and of the complaint to
7 an officer, a managing or general agent, or any other agent authorized by appointment or by
8 law to receive service of process,” or in the manner prescribed by the state law in which the
9 district court is located. Fed. R. Civ. P. 4(h). Here, the Court considers the manner prescribed
10 by Nevada law. And in Nevada, if the suit is against an entity formed under Nevada law,
11 registered to do business in the state, or that appointed a registered agent in the state, service
12 may be accomplished by serving “the registered agent thereof.” Nev. R. Civ. P. 4.2(c)(1).

13 Plaintiffs provided *prima facie* evidence of valid service through the Affidavit of Service
14 filed with the Court, (ECF No. 9). The burden of proof consequently rests with Defendant to
15 show entitlement to relief under FRCP 60(b)(4). *See S.E.C. v. Internet Sols. for Bus. Inc.*, 509
16 F.3d 1161, 1166 (9th Cir. 2007) (quoting *O’Brien v. R.J. O’Brien & Assocs., Inc.*, 998 F.2d
17 1394, 1398 (7th Cir. 1993)) (explaining the substantial burden that a defendant holds in proving
18 entitlement to relief under FRCP 60(b)). Defendant has not satisfied that burden.

19 To explain, Defendant moves for the Court to find the default judgment “void” because
20 Plaintiffs should have searched for Mr. Buitron’s information in the Federal Bureau of Prisons
21 registry and served Defendant at that address—and the failure to do so purportedly violated due
22 process by depriving Defendant “an opportunity to be heard.” (Mot. Vacate Default J. at 4).
23 However, service of process in Nevada is “valid regardless of whether the status of the entity in
24 the records of the Secretary of State is in default or is revoked . . . if such process is served
25 within 3 years after the entity’s date of default.” Nev. Rev. Stat. 14.020(2). The Nevada

1 Secretary of State's website lists Defendant's registered agent as Incorp Services, Inc. located
 2 at 3773 Howard Hughes Pkwy., Suite 500S, Las Vegas, NV 89169. (Nev. Secretary of State
 3 Website, Ex. A to Pl.'s Resp., ECF No. 20-1). The website also lists Defendant's entity status
 4 as "revoked" as of May 31, 2016. (*Id.*). Accordingly, Plaintiffs properly served Defendant by
 5 delivering a copy of the Complaint and Summons to Defendant's registered agent on December
 6 14, 2017, within three years after the Nevada Secretary of State revoked Defendant's entity
 7 status. (Aff. Service, ECF No. 9). This Court consequently had jurisdiction over the parties and
 8 validly entered default judgment against Defendant.

9 **C. Rule 60(b)(1)**

10 Micah Buitron also moves for the Court to vacate default judgment against Defendant on
 11 the ground that Defendant's failure to answer was not intentional, but rather because it could
 12 not have responded unless Plaintiffs served Defendant's sole member (Micah Buitron) in
 13 prison. (Mot. Vacate Default J. at 3–4). As explained below, the Court denies Defendant's
 14 motion pursuant to Federal Rule of Civil Procedure 60(b)(1) because Defendant's culpable
 15 conduct led to the default judgment against it, Plaintiffs would be prejudiced if the default
 16 judgment were now vacated, and Defendant has not demonstrated a meritorious defense.

17 Addressing first culpable conduct, it is not clear from the record whether Defendant ever
 18 received actual notice of this case before entry of judgment. However, as articulated in the
 19 FRCP 60(b)(4) analysis, Plaintiffs properly served Defendant by delivering a copy of the
 20 Complaint and Summons to Defendant's registered agent on December 14, 2017. (Aff. Service,
 21 ECF No. 9). Defendant failed to ensure that an address other than the one for its registered
 22 agent was accessible and listed for purposes of service. Therefore, the evidence here supports a
 23 finding that Defendant had constructive notice of this action through the service of process to
 24 its registered agent, yet Defendant failed to answer.

25 Next, concerning prejudice, Plaintiffs explain that vacating the default nearly one year

1 after entry of judgment would result in harm to a settlement between the Government and
 2 Nationstar involving the Property. (Resp. 6:24–27) (explaining that the settlement centers on
 3 the Government’s forfeiture action against Edward Bui, *United States v. Edward Bui a/k/a*
 4 *Micah Buitron*, Case No. CR17-112-RAJ, and noting that Plaintiffs have already “recorded the
 5 default judgment and release[d] the lis pendens” in the time since the Court closed this case).
 6 The Court agrees that this potential harm constitutes sufficient prejudice to warrant denial of
 7 Defendant’s request to vacate the default judgment.

8 Lastly, Defendant has not articulated a meritorious defense to warrant vacating the
 9 default judgment. As Plaintiffs note in their Response and allege in their Complaint, sale of the
 10 Property to Defendant likely did not extinguish Plaintiffs’ deed of trust because the Federal
 11 Foreclosure Bar, 12 U.S.C. § 4617(j)(3), preempts Nevada’s superpriority lien scheme. (Resp.
 12 4:1–11); (Compl. ¶¶ 1–8, 18–148); *Berezovsky v. Moniz*, 869 F.3d 923, 927 (9th Cir. 2017).
 13 Defendant provides no argument or evidence showing that these preemption principles do not
 14 apply in this case so that the foreclosure sale extinguished Plaintiffs’ deed of trust on the
 15 Property.¹

16 **IV. CONCLUSION**

17 **IT IS HEREBY ORDERED** that Defendant’s Motions to Vacate Default Judgment,
 18 (ECF Nos. 18, 19), are **DENIED**.

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